

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
ALPHONSO FRANKLIN, :
:

Plaintiff, : 21cv4810 (DLC)

-v- :
:

ORDER

CONA ELDER LAW, PLLC f/k/a GENSER, :
DUBOW, GENSER & CONA LLP, KEN KERN, and :
THE WARTBURG HOME OF THE EVANGELICAL :
LUTHERAN CHURCH, :

Defendants. :
:
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DENISE COTE, District Judge:

This case was filed on May 28, 2021. On January 28, 2022, this Court granted the defendants' motion to dismiss the sole federal claim in this action and declined to exercise supplemental jurisdiction over the state law claims. The state law claims were dismissed without prejudice.

On February 11, 2022, plaintiff's counsel notified the Court of the death of the plaintiff and moved for extension of the deadline for substitution of plaintiff's son Delvin Franklin, who planned to move to be appointed as the administrator of his father's estate in Surrogates Court in the Bronx. Also on February 11, counsel requested an extension of the deadline for filing a motion for reconsideration until 14 days after any ruling on the motion for substitution.

On June 25, 2024, plaintiff's counsel informed the Court that they had terminated their representation of Delvin Franklin; however, an attorney who has filed a notice of appearance must obtain the Court's permission to withdraw. Counsel did not inform the Court of the reason for their application or whether they had discussed their withdrawal with Mr. Franklin.

In addition, an administrator or executor of an estate "may not proceed pro se when the estate has beneficiaries or creditors other than the litigant." Guest v. Hansen, 603 F.3d 15, 21 (2d Cir. 2010). Although counsel informed the Court in the letter of February 11, 2022, that upon information and belief, Delvin Franklin is the sole distributee of Alphonso Franklin's estate, counsel has not informed the Court whether the estate has creditors.

Because of this procedural history, and given that the state law claims survive, it is hereby

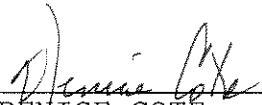
ORDERED that the FDCPA claim in this case is dismissed with prejudice.

IT IS FURTHER ORDERED that the Court declines to exercise supplemental jurisdiction over the state law claims, which are dismissed without prejudice.

It IS FURTHER ORDERED that the plaintiff's motions for extension of time to move for substitution and for

reconsideration are denied. The Clerk of Court is instructed to close the case.

Dated: New York, New York
June 26, 2024



DENISE COTE
United States District Judge